

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

IN RE:

CLAIRE DEES

CASE NO.: 19-40286-KKS  
CHAPTER: 13

Debtor.

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**AMENDED<sup>1</sup> FINDINGS OF FACT AND CONCLUSIONS OF  
LAW IN SUPPORT OF *ORDER TRANSFERRING VENUE*  
(DOC. 116)**

THIS MATTER came before the Court for a final evidentiary hearing (“Final Hearing”) on New Rez, LLC dba Shellpoint Mortgage Servicing as servicer for the Bank of New York Mellon fka The Bank of New York as Trustee for the CWALT Inc.’s (Creditor) *Motion for Prospective Relief from Automatic Stay* (“Motion,” Doc. 24) and the *Amended Supplemental Order to Show Cause Why Case Should not be Dismissed with Prejudice* (“OTSC,” Doc. 80). Self-represented Debtor filed a response to the Motion (“Response,” Doc. 53).

Based on evidence and oral argument presented at the Final Hearing, the Court found that venue is not proper in this District, that

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<sup>1</sup> *The Supplemental Order: Findings of Fact and Conclusions of Law in Support of Order Transferring Venue* (Doc. 120) is being amended to clarify that these Findings of Fact and Conclusions of Law are in support of the *Order Transferring Venue* (Doc. 116), and do not constitute a separate order of this Court.

the case should be transferred to the Bankruptcy Court for the Northern District of Georgia, Atlanta Division, and reserved jurisdiction to enter this Supplemental Order.<sup>2</sup>

### **FINDINGS OF FACT**

Debtor and her non-filing husband have filed a total of fourteen (14) bankruptcy cases in this Court and in the Bankruptcy Court for the Northern District of Georgia. Each case was filed, according to Debtor, for the purpose of pursuing a refund for what Debtor and her husband argue is an invalid debt on a void note. A detailed break-down of Debtor's and her husband's cases, and their respective dispositions, is below.

#### **Cases filed by Mark Dees**

1. Case 11-84603-PWB was filed as a Chapter 7 case in the Bankruptcy Court for the Northern District of Georgia, Atlanta Division, on December 5, 2011.<sup>3</sup> Mr. Dees was granted a discharge on March 21, 2012.<sup>4</sup>
2. Case 12-63860-PWB was filed as a Chapter 13 case in the

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<sup>2</sup> This Order supplements the *Order Transferring Venue* ("Order," Doc. 116).

<sup>3</sup> *In re Mark H. Dees*, Case No. 11-84603-PWB, Doc. 1 (Bankr. N.D. Ga. Dec. 5, 2011).

<sup>4</sup> *Id.* at Doc. 16.

Bankruptcy Court for the Northern District of Georgia, Atlanta Division, on June 4, 2012.<sup>5</sup> The case was dismissed on August 16, 2012 after Mr. Dees failed to file the required schedules, Chapter 13 plan, or make any plan payments.<sup>6</sup>

3. Case 12-79439-PWB was filed as a Chapter 13 case in the Bankruptcy Court for the Northern District of Georgia, Atlanta Division, on November 30, 2012.<sup>7</sup> Mr. Dees did not file any schedules, Chapter 13 plan, or any motion to extend the automatic stay. Mr. Dees filed a *Motion to Voluntarily Dismiss without Prejudice*, which the court granted on February 4, 2013.<sup>8</sup> At the time Mr. Dees filed his motion, a motion to dismiss case with prejudice was pending before the court.<sup>9</sup>

4. Case 13-59350-PWB was filed as a Chapter 13 case in the Bankruptcy Court for the Northern District of Georgia, Atlanta Division, on April 30, 2013.<sup>10</sup> Mr. Dees did not file any schedules, Chapter 13 plan, or any motion to extend the

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<sup>5</sup> *In re Mark H. Dees*, Case No. 12-63860-PWB, Doc. 1 (Bankr. N.D. Ga. Jun. 4, 2012).

<sup>6</sup> *Id.* at Doc. 27.

<sup>7</sup> *In re Mark Hoyt Dees*, Case No. 12-79439-PWB, Doc. 1 (Bankr. N.D. Ga. Nov. 30, 2012).

<sup>8</sup> *Id.* *Motion to Voluntarily Dismiss without Prejudice*, Doc. 14; *Order Dismissing Chapter 13 Case*, Doc. 15.

<sup>9</sup> *Id.* at Doc. 13.

<sup>10</sup> *In re Mark Hoyt Dees*, Case No. 13-59350-PWB, Doc. 1 (Bankr. N.D. Ga. Apr. 30, 2013).

automatic stay. The case was dismissed on May 23, 2013 because Mr. Dees failed to correct these filing deficiencies.<sup>11</sup>

5. Case 14-58225-PWB was filed as a Chapter 13 case in the Bankruptcy Court for the Northern District of Georgia, Atlanta Division, on April 28, 2014.<sup>12</sup> Mr. Dees did not file any schedules, Chapter 13 plan, or any motion to extend the automatic stay. The case was dismissed on June 27, 2014 on the Chapter 13 Trustee's motion to dismiss for failure to file the required credit counseling certificate.<sup>13</sup> The Chapter 13 Trustee sought dismissal with prejudice, but the court simply dismissed the case.<sup>14</sup> At the time the case was dismissed on the Chapter 13 Trustee's motion, Mr. Dees had a pending motion to voluntarily dismiss the case without prejudice.<sup>15</sup>

6. Case 15-50268-PWB was filed as a Chapter 13 case in the Bankruptcy Court for the Northern District of Georgia, Atlanta Division, on January 5, 2015.<sup>16</sup> The case was dismissed on

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<sup>11</sup> *Id.* at Doc. 11.

<sup>12</sup> *In re Mark Hoyt Dees*, Case No. 14-58225-PWB, Doc. 1 (Bankr. N.D. Ga. Apr. 28, 2014).

<sup>13</sup> *Id.* at Doc. 25.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at Doc. 17.

<sup>16</sup> *In re Mark Hoyt Dees*, Case No. 15-50268-PWB, Doc. 1 (Bankr. N.D. Ga. Jan. 5, 2015).

March 13, 2015, with prejudice, for failure to make plan payments, file a plan and other required schedules, and failure to attend the § 341 meeting of creditors.<sup>17</sup> Mr. Dees was barred from filing another bankruptcy case for 180 days.<sup>18</sup>

7. Case 18-51622-LRC was filed as a Chapter 13 case in the Bankruptcy Court for the Northern District of Georgia, Atlanta Division, on February 1, 2018.<sup>19</sup> The case was dismissed on March 27, 2018 for failure to make plan payments, file a plan or schedules, and for failure to attend the § 341 meeting of creditors.<sup>20</sup>

8. Case 19-53426-LRC was filed as a Chapter 13 case in the Bankruptcy Court for the Northern District of Georgia, Atlanta Division, on March 4, 2019.<sup>21</sup> Mr. Dees did not file any schedules, Chapter 13 plan, or any motion to extend the automatic stay. The case was dismissed on March 29, 2019 for failure to cure these filing deficiencies.<sup>22</sup>

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<sup>17</sup> *Id.* at Doc. 12.

<sup>18</sup> *Id.*

<sup>19</sup> *In re Mark Hoyt Dees*, Case No. 18-51622-LRC, Doc. 1 (Bankr. N.D. Ga. Feb. 1, 2018).

<sup>20</sup> *Id.* at Doc. 22.

<sup>21</sup> *In re Mark Hoyt Dees*, Case No. 19-53426-LRC, Doc. 1 (Bankr. N.D. Ga. Mar. 4, 2019).

<sup>22</sup> *Id.* at Doc. 12.

**Cases filed by Claire Dees (“Debtor”)**

1. Case 13-66956-PWB was filed as a Chapter 7 case in the Bankruptcy Court for the Northern District of Georgia, Atlanta Division, on August 5, 2013.<sup>23</sup> Debtor was granted a discharge on November 20, 2013.<sup>24</sup>
2. Case 14-51957-PWB was filed as a Chapter 13 case in the Bankruptcy Court for the Northern District of Georgia, Atlanta Division, on January 31, 2014.<sup>25</sup> Debtor did not file any schedules, Chapter 13 plan, or any motion to extend the automatic stay. The case was dismissed on March 3, 2014 for failure to cure these filing deficiencies.<sup>26</sup>
3. Case 14-69264-PWB was filed as a Chapter 13 case in the Bankruptcy Court for the Northern District of Georgia, Atlanta Division, on October 2, 2014.<sup>27</sup> Debtor did not file any schedules, Chapter 13 plan, or any motion to extend the automatic stay. The case was dismissed on October 20, 2014 for

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<sup>23</sup> *In re Claire Cowsert Dees*, Case No. 13-66956-PWB, Doc. 1 (Bankr. N.D. Ga. Nov. 20, 2013).

<sup>24</sup> *Id.* at Doc. 10.

<sup>25</sup> *In re Claire Cowsert Dees*, Case No. 14-51957-PWB, Doc. 1 (Bankr. N.D. Ga. Jan. 31, 2014).

<sup>26</sup> *Id.* at Doc 10.

<sup>27</sup> *In re Claire Cowsert Dees*, Case No. 14-69264-PWB, Doc. 1 (Bankr. N.D. Ga. Oct. 2, 2014).

failure to cure these filing deficiencies.<sup>28</sup>

4. Case 15-59842-PWB was filed as a Chapter 13 case in the Bankruptcy Court for the Northern District of Georgia, Atlanta Division, on May 28, 2015.<sup>29</sup> Debtor did not file any schedules, Chapter 13 plan, or any motion to extend the automatic stay. The case was dismissed on June 22, 2015 for failure to cure these filing deficiencies.<sup>30</sup>

5. Case 18-60803-WLH was filed as a Chapter 13 case in the Bankruptcy Court for the Northern District of Georgia, Atlanta Division, on June 29, 2018.<sup>31</sup> Debtor did not file any schedules, Chapter 13 plan, or any motion to extend the automatic stay. The case was dismissed on July 26, 2018 for failure to cure these filing deficiencies.<sup>32</sup>

Debtor filed her current case in this Court as a Chapter 13 on May 23, 2019.<sup>33</sup> On commencement of the case, Debtor only filed a bare-bones Voluntary Petition (“Petition”), Statement of Social Security Number,

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<sup>28</sup> *Id.* at Doc. 11.

<sup>29</sup> *In re Claire Cowsert Dees*, Case No. 15-59842-PWB, Doc. 1 (Bankr. N.D. Ga. May 28, 2015).

<sup>30</sup> *Id.* at Doc. 11.

<sup>31</sup> *In re Claire Dees*, Case No. 18-60803-WLH, Doc. 1 (Bankr. N.D. Ga. Jun. 29, 2018).

<sup>32</sup> *Id.* at Doc. 11.

<sup>33</sup> *In re Claire Dees*, Case No. 19-40286-KKS, Doc. 1 (Bankr. N.D. Fla. May 23, 2019).

Certificate of Credit Counseling, and statement of assistance in connection with filing this case.<sup>34</sup> Debtor did not file a motion to extend the automatic stay. Due to Debtor's most previous case being dismissed within one year of commencing this case, pursuant to the provisions of 11 U.S.C. § 362(c)(3)(A), the automatic stay in this case expired thirty (30) days after the filing of the original Petition.

In her Petition, filed under penalty of perjury, Debtor listed her physical address as 1635 Raymond Diehl, #350, Tallahassee, FL 32308 ("Raymond Diehl Address"), and her mailing address as 3551 Blainstone Road, 128-127, Tallahassee, FL 32301 ("Blainstone Road Address").<sup>35</sup> In response to the question which asks "Why are you choosing this district to file for bankruptcy," Debtor selected the response "I have another reason. Explain."<sup>36</sup> Debtor gave no further explanation in her Petition. Debtor estimated her total assets to be worth between \$100,000 and \$500,000, and her liabilities as between \$500,001 and \$1,000,000.<sup>37</sup> Attached to Debtor's Petition was a document entitled "Creditor

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<sup>34</sup> *Id.* at Docs. 1, 2, 3, and 4.

<sup>35</sup> Doc. 1.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*



Matrix,” which listed only three creditors.<sup>38</sup>

Despite four (4) court orders,<sup>39</sup> and explicit directions at a hearing held on August 1, 2019, Debtor did not file any schedules or Chapter 13 plan in this case until almost four (4) months after the case commenced, on September 12, 2019, along with an Amended Petition.<sup>40</sup>

In her Amended Petition, Debtor removed both her physical address and her mailing address, leaving that information blank.<sup>41</sup> Additionally, in response to the inquiry as to why she filed bankruptcy in this District, Debtor indicated that she had another reason for filing in this District, specifically “to obtain an evidentiary hearing to obtain

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<sup>38</sup> *Id.*

<sup>39</sup> *Order Establishing Duties of the Debtor and Chapter 13 Trustee, Adequate Protection of Secured Claims, Allowance of Administrative Expenses, and Confirmation Procedures* (Doc. 6) (“(a) The Debtor shall: i. File and serve a plan that conforms to the Court’s form plan no later than fourteen (14) days from the date of filing of the Chapter 13 petition. . . .”); *Order to Show Cause why Case Should not be Dismissed for Debtor’s Failure to Comply with Requirements of Section 521 of the Bankruptcy Code* (Doc. 29) (the OTSC for Filing Deficiencies, entered on July 10, 2019, states that the deadline for filing the required documents under 11 U.S.C. § 521 ran on July 8, 2019, and ordered that “[t]he debtor(s) shall submit the missing information or show cause, in writing, within fourteen (14) days from the date of this Order why this case should not be dismissed. . . .”); *Order to Show Cause* (Doc. 57) (The *Order to Show Cause* set a preliminary hearing on August 1, 2019, for Debtor to address the filing deficiencies.); *Amended Supplemental Order to Show Cause why Case Should not be Dismissed with Prejudice* (“Supplemental OTSC,” Doc. 80) (The Supplemental OTSC set the Final Hearing, and specified that the Debtor should be prepared to present evidence including “why Debtor qualifies to be a debtor in this District; why Debtor’s previous cases were filed; as well as why Debtor has failed to file the required schedules, Chapter 13 plan, and why Debtor has failed to make payments to the Chapter 13 Trustee in her current Chapter 13 Case.”)

<sup>40</sup> Docs. 95, 96, and 99.

<sup>41</sup> Doc. 99.

a refund of payments collected after violations of unfair business practice act OCGA 10-1-390 & 1:12cv00361 RMC.”<sup>42</sup> Question 16c. on the Amended Petition asks Debtor to “[s]tate the type of debts you owe that are not consumer debts or business debts.”<sup>43</sup> Debtor responded that she is “a creditor who is owed a refund on three void mortgages.”<sup>44</sup> Debtor also reduced the estimation of her liabilities ranging from \$500,001 to \$1,000,000, to \$0 to \$50,000.<sup>45</sup> When asked about the reduction in liabilities at the Final Hearing, Debtor indicated that she was in fact a creditor, and not the Debtor in this case, and that she and her husband did not owe anyone any money.

In Debtor’s schedules, there are also several telling facts. All real properties listed in Schedule A are located in Gwinnett County, Georgia.<sup>46</sup> Debtor lists herself as a creditor on Schedule D with a mailing address located in Lawrenceville, Georgia.<sup>47</sup> Debtor does not list any other creditors on her Schedules. In fact, at the Final Hearing, Debtor specifically stated “we don’t owe any money to anyone.” On Schedule I,

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Doc. 95, p. 1-2.

<sup>47</sup> *Id.* at p. 13.

Debtor lists her occupation as “Executive Director” of Spectrum Autism Support Group, which has a mailing address in Suwanee, Georgia.<sup>48</sup> A review of her Schedules shows Debtor has no ties to this District as all her properties appear to be located in Georgia, her employment appears to be in Georgia, and the address listed for Debtor as a creditor listed on Schedule D is also located in Georgia.

Prior to the Final Hearing, Creditor filed its exhibits in support of the Motion.<sup>49</sup> Exhibit 2 shows that the Blairstone Road Address, listed as Debtor’s mailing address on her original Petition, in fact belongs instead to a UPS Store.<sup>50</sup> Exhibit 3 shows that the Raymond Diehl Address, listed as Debtor’s physical address on her original Petition, in fact belongs instead to a Holiday Inn Express.<sup>51</sup>

At the Final Hearing, Mr. Dees and Debtor both testified as to, among other things, the fact that Debtor, Mr. Dees, and Creditor have been engaged in a long and difficult battle regarding real property on which Creditor holds the mortgage. Debtor further testified that she does not have a residence in Florida, but that she and her husband

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<sup>48</sup> *Id.* at p. 24.

<sup>49</sup> Doc. 83.

<sup>50</sup> *Id.* at p. 13.

<sup>51</sup> *Id.* at p. 23.

travel to Florida as often as possible. When asked why Debtor filed in this District, Debtor testified and she and her husband spend so much time in Florida, that she felt she had a right to file here. In her opening statement, Debtor indicated that the reason she filed in this District was because she felt this Court would be fair and unbiased regarding the issues between her and Creditor.

Mr. Dees testified that he and Debtor did not admit to owing any debt to Creditor. Mr. Dees claimed that he never borrowed money on the real property at issue in the Motion, and in fact, that he and Debtor are entitled to a refund because they were tricked into making payments on the property. Mr. Dees also testified that he did not recall making any payments to Creditor for the subject property, and it was his understanding that the “alleged” loan was actually issued in someone else’s name. Mr. Dees testified both that he did not own the real property free and clear of liens, and that he had never borrowed money to purchase the real property. From his testimony, it is unclear how Mr. Dees believes he came into ownership of the real property.

## CONCLUSIONS OF LAW

Venue is proper in the District,

in which the domicile, residence, principal place of business . . . or principal assets . . . of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business . . . or principal assets . . . of such person were located in any other district . . .<sup>52</sup>

If a case is filed in the improper district, the Court may, on its own or on motion of a party in interest, “after a hearing on notice to the petitioners, the United States trustee, and other entities . . . dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.”<sup>53</sup> Further, Fed. R. Bankr. P. 9030 states “[t]hese rules shall not be construed to extend or limit the jurisdiction of the courts or the venue of any matters therein.”

A minority of courts have held that where a case is filed in the incorrect district, retention of that case is allowed by the Bankruptcy Code and Rules in the bankruptcy court in which the case was

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<sup>52</sup> 28 U.S.C. § 1408(1) (2019).

<sup>53</sup> Fed. R. Bankr. P. 1014(a)(2).

improperly filed.<sup>54</sup> The majority of courts, however, find that retention is not an option under the Bankruptcy Code and Rules. For example, in the Bankruptcy Court for the Middle District of Florida, Judge Funk transferred a series of cases commenced by entities that had no ties to Florida.<sup>55</sup> The court found that the cases were filed in the Middle District of Florida “to side-step the rulings in both the Pennsylvania District Court and the Pennsylvania Bankruptcy Court.”<sup>56</sup> The court stated that it could not “sanction such apparent abuse of the bankruptcy process.”<sup>57</sup> The court held that the latest iteration of the Bankruptcy Code and Rules does not allow for retention of cases filed in an improper district. Quoting the Advisory Committee’s explanation of changes to Rule 1014, the court noted “[t]he rule is amended to delete the reference to retention of a case commenced in the improper district.”<sup>58</sup> The court ultimately transferred the cases, finding “[t]he Court lacks the ability to retain the cases, and the interest of justice requires that the Court

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<sup>54</sup> See *In re Lazaro*, 128 B.R. 168 (Bankr. W.D. Tex. 1991); see also *In re Leonard*, 55 B.R. 106 (Bankr. D.D.C. 1985).

<sup>55</sup> *In re Penn-Mont Benefit Services, Inc.*, Case No.: 3:13-bk-05986-JAF, 2013 WL 6405046 (Bankr. M.D. Fla. Dec. 6, 2013).

<sup>56</sup> *Id.* at \*7.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at \*9.

transfer them . . .”<sup>59</sup>

At the Final Hearing, Creditor asked that this Court adopt the minority view and retain Debtor’s case to render a final decision on the Motion. The Court declines to do so as the interest of justice is better served by transferring Debtor’s case to the Bankruptcy Court for the Northern District of Georgia, where Debtor’s and Mr. Dees’ previous thirteen (13) combined total cases have been filed. As alleged by Creditor, Debtor and Mr. Dees have already raised and litigated, or at least attempted to litigate, the same issues in the Bankruptcy Court for the Northern District of Georgia. This allegation was supported by Debtor’s testimony at the Final Hearing that she and Mr. Dees have filed their many bankruptcy cases in an attempt to seek evidentiary hearings. From the evidence, it appears that because Debtor and Mr. Dees were unsuccessful in their attempts in front of the Bankruptcy Court for the Northern District of Georgia, they have engaged in an obvious attempt at forum shopping that will not be tolerated by this Court.

Debtor and Mr. Dees have no ties to Florida other than visiting

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<sup>59</sup> *Id.* at \*11.

occasionally, and the hope of making Florida their home some time in the future. All of Debtor's real property is listed in Georgia, as is her address found on Schedule D, and her place of employment. Nothing on Debtor's schedules, or in Debtor's testimony leads this Court to believe the venue is proper in this District.

For the reasons stated, it is

ORDERED: These constitute the Court's findings of fact and conclusions of law in support of the *Order Transferring Venue* (Doc. 116), entered on September 18, 2019.

DONE and ORDERED on October 4, 2019.



KAREN K. SPECIE  
Chief U. S. Bankruptcy Judge

cc: all parties in interest, including  
Claire Dees  
3551 Blainstone Rd., 128-127  
Tallahassee, FL 32301